



A2

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy.

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
U.S. 3rd Floor
Washington, D.C. 20536

FILE:

Office: Miami

Date:

JUN 24 2002

IN RE: Applicant:

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of
November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

APPEALS COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

Robert P. Wiemann

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be withdrawn, and the application will be approved.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1956. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Act, 8 U.S.C. 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).

The record reflects the following:

1. On July 13, 1990, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 90-25188, the applicant was indicted for corruption by threat against a public servant. On August 15, 1990, the applicant was found guilty of the charge; adjudication of guilt was withheld, he was sentenced to 2

days credit for time served, and ordered to pay \$225 in fines and costs.

2. On January 20, 1983, in the County Court, Dade County, Florida, Case No. 81-24113, the applicant was convicted of petit larceny. Adjudication of guilt was withheld and he was placed on probation for a period of 60 days.

3. On May 14, 1986, in Dade County, Florida, Case No. 86-13730, the applicant was arrested and charged with Count 1, possession of marijuana; Count 2, destruction of evidence; and Count 3, resisting arrest without violence. On June 4, 1986, a "no information" was entered on the case.

4. On July 2, 1986, in Dade County, Florida, Case No. 86-15628B, the applicant was arrested and charged with Count 1, burglary unoccupied structure, and Count 2, theft. On November 21, 1986, a "nolle pros" was entered on the case.

The district director determined that the applicant was inadmissible to the United States based on his convictions of (1) corruption by threat against a public servant and (2) petit theft, found to involve crimes of moral turpitude.

Pursuant to Florida Statute 838.021, whoever unlawfully harms or threatens unlawful harm to any public servant, or to any other person with whose welfare the public servant is interested, shall be guilty of a felony. The applicant was convicted of the crime of corruption by threat against a public servant. The police report in this case shows that the applicant was involved in a traffic accident, he was placed under arrest for driving under the influence and was being transported for injuries sustained as a result of the accident. While enroute, the applicant began making threatening statements against the officer and said that "if [the officer] didn't release him right now, that as soon as he gets out of jail wherever [sic] I am he is going to kill me." The crime of corruption by threat against a public servant has not been found to involve moral turpitude; the applicant did not unlawfully harm the officer, nor did he use deadly force. However, theft or larceny, whether grand or petty, is a crime involving moral turpitude. Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974); Morasch v. INS, 363 F.2d 30 (9th Cir. 1966).

Section 212(a)(2)(A)(ii) of the Act provides for an exception to inadmissibility of an alien convicted of only one crime of moral turpitude, where the maximum penalty possible for the crime did not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed). Pursuant to Florida Statute 812.014(1)(d), petit theft is a misdemeanor of the second degree punishable by a term of imprisonment not exceeding 60

days. In this case, the applicant was not sentenced to imprisonment, but rather placed on probation. He, therefore, qualifies for this exception to inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

Accordingly, the applicant is eligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966, and he warrants a favorable exercise of discretion. The district director did not find the applicant ineligible under any other provisions of the Act. The decision of the district director will be withdrawn, and the application will be approved.

ORDER: The director's decision is withdrawn. The application is approved.